IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.223 of 1993

Decided on : December 4, 2007

State of H.P. **…Appellant.**

Versus

Rakesh Kumar and others **…Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Som Dutt Vasudeva, Additional Advocate General.

For the Respondents : Mr. Ramakant Sharma, Advocate.

Surjit Singh, Judge(Oral)

Respondents were charged with and tried for offences punishable under Sections 366, 376, 354, 506 read with Section 34 IPC, for allegedly abducting, raping and assaulting the prosecutrix with intent to outrage her modesty and then intimidating her, on 20th February, 1991, late in the evening.

2. As per prosecution version, prosecutrix alongwith her two sisters, younger to her, used to reside in a house in Rajgarh, headquarter of one of the Sub Divisions of Sirmour District. On 20th February, 1991, when she was present in her house alongwith the man she had been betrothed to, namely PW-4 Satya Prakash, respondent Vijay Thakur allegedly knocked at the door, which was not bolted from inside. Hearing the knock, PW-4 Satya Prakash said that the door was open and the person knocking could come in. Upon that respondent

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Whether reporters of the local papers may be allowed to see the judgment?

Vijay Thakur went inside the room and asked the prosecutrix to come out. On her refusal, respondent Vijay Thakur allegedly pulled her out forcibly. When PW-4 Satya Prakash tried to intervene, he was slapped and pushed inside. Prosecutrix was also slapped when she resisted being pulled out. Outside the room, remaining respondents were present. They all forcibly dragged the prosecutrix to a red-coloured Maruti Van, which was parked by the side of the road near the house of the prosecutrix. The prosecutrix was taken by all the respondents in that Maruti Van to a place called Kotli, which is at a distance of 2-3 kms. from the house of the prosecutrix. There the Maruti Van was stopped and all the respondents, except respondent Rakesh Kumar, alighted from the Van. Respondent Rakesh Kumar then drove the Maruti Van, with the prosecutrix inside. He stopped the van after driving for half a kilometer and forcibly carried the prosecutrix to a *Ghasni*. Prosecutrix put up resistance and struggled for about 10-15 minutes. When she got exhausted, respondent Rakesh Kumar committed sexual intercourse with her against her will and without her consent. Respondent Rakesh Kumar then told to the prosecutrix that the other male respondents would also have intercourse with her. The prosecutrix pretended that she wanted to urinate. On that pretext she ran away from the spot. After reaching a safe distance, she started running. She was chased by respondent Rakesh Kumar, but the latter could not overpower her. Prosecutrix reached the house of PW-3 Dropti Devi in village Neri, which is at a distance of 2-3 kms. from the spot. She took shelter at the house of said PW-3 Dropti Devi for the night and next day she left by bus in the morning and reached Nauni University where her fiancée was studying those days. Her fiancée remained in her room at Rajgarh because the door of the room had

been bolted from outside by respondent Vijay Thakur, when he forcibly pulled the prosecutrix out of her room. Next morning, her fiancée noticed a boy outside the room and requested him to unbolt the room from outside. After the room was unbolted, prosecutrix's fiancée PW-4 Satya Prakash went to Police Station Rajgarh at 8.15 a.m. and lodged the report. Thereafter, a police party acccompanied by PW-4 Satya Prakash went in search of the prosecutrix towards Nauni. Prosecutrix was found sitting in a tea-stall at Nauni. She made a statement to the Police, which was recorded under Section 161 of the Code of Criminal Procedure.

3. Prosecutrix was got medically examined. No injury was found on her person. Slides of her vaginal smear were prepared and sent to the Chemical Examiner. No sperms were found in the vaginal smear. Doctor gave the opinion, after going through the report of the Chemical Examiner, that the prosecutrix had not been subjected to sexual intercourse, within three days of her having examined her. The prosecutrix was examined on 22nd February, 1991.

4. Prosecutrix told the police during the investigation that when she was running away from the spot her *Dupatta* got entrapped in the bushes. Police went to the spot and found her *Dupatta,* which according to the photographs, was stuck to the trunks of two trees of pine and not trapped in bushes.

5. Trial Court, on the conclusion of the trial, gave the finding that not only the testimony of the prosecutrix did not inspire confidence but it was contradicted in material particulars by her own statement to the police, under Section 161 of the Code of Criminal Procedure, and also by the testimony of the other witnesses.

6. We have gone through the record and heard the learned Additional Advocate General. We see no reason to interfere with the judgment of acquittal recorded by the trial Court, especially when after going through the judgment and the record we feel that the view taken by the trial Court is not reasonably impossible.

7. Case of the prosecution is that the prosecutrix was abducted from her house at Rajgarh at 8.45 p.m. and she reached the house of PW-3 Dropti Devi in village Neri at 9.30 p.m. and in between the two timings, noted above, she had been forcibly taken to Kotli, by all the respondents and there she was raped by one of the respondents after 10-15 minutes of struggle/resistance put up by her and further, according to the prosecution, 10 minutes' time was taken by respondent Rakesh Kumar to satisfy his lust. Distance between the house of the prosecutrix and the place in village Kotli where she was taken is 2-3 kms, per prosecutrix's own testimony. On the way, the respondents are alleged ot have purchased liquor also. After the rape was committed, the prosecutrix claims to have gone to the house of PW-3 Dropti Devi in village Neri, which is, according to her own testimony, again at a distance of 2-3 kms. from the place where she was raped. She says that when respondent Rakesh Kumar chased her she jumped from *Ghasni* land to the road and in that process one of her feet was injured and the injury was bleeding. The offence of rape could not have been committed before 9.30 p.m. because of the aforesaid travelling and intervening things. Thus, the prosecutrix could not have reached village Neri in the house of PW-3 Dropti Devi at 9.30 p.m. and that too when one of her feet was injured and bleeding.

8. PW-3 Dropti Devi also does not corroborate the prosecutrix's story in full. Even though she says that the prosecutrix

reached her house at 9.30 p.m., she does not say that the prosecutrix told that she had been raped. According to her, she told that she (the prosecutrix) had been abducted by 4-5 boys. She was cross-examined by the prosecution with the leave of the Court. In her cross-examination by the prosecution, she denied that the prosecutrix told that she had been raped and one of the respondents was a lady.

9. Prosecutrix, while in the witness-box as PW-5, stated that only two of the respondents, namely Vijay Thakur and Rakesh Kumar, forcibly took her inside the van and other respondents remained sitting in the van. However, in her statement to the police, under Section 161 of the Code of Criminal Procedure, Ex. DB, vide portion A to A, she stated that all the respondents, except respondent Vijay Thakur, forcibly dragged her to the Maruti Van and bundled her into the said van. She was duly confronted with her statement. Again, even though the prosecutrix says that one of her feet got injured and started bleeding, but no injury on her foot was noticed at the time of her medico legal examination by PW-1 Dr. (Mrs.) Tripta Singh. Also, no sign of any struggle was found on her person.

10. *Dupatta* was testified by the prosecutrix to have got entangled in the bushes when she was fleeing, but the photographs Ex. P-4 and Ex. P-5 show that it was not entrapped in any bushes but appear to have been stuck to two pine trees. Not only this, PW-6 Pritam Singh, who took the photographs at the instance of the SHO, stated that before the photographs were taken the SHO had required the prosecutrix to place the *Dupatta* in the manner it got entangled in the bushes when she was fleeing. Prosecutrix claims that the *Dupatta* remained on the spot, when she had fled and that *Dupatta* Ex.P-1, which was produced in the Court belonged to her. However, PW-3

Dropti Devi stated that the *Dupatta* had been provided to the prosecutrix by her, when she reached her house in the night, as she was not having any *Dupatta* with her.

11. Conduct of PW-4 Satya Prakash is also quite unnatural. He says that the prosecutrix was abducted at 8.45 p.m. from her house situated in a thickly populated area. It is the admitted case of the prosecution that the house of the prosecutrix is surrounded by many houses. Names of the owners of such houses are there in the testimony of the prosecutrix. PW-4 Satya Prakash says that he had been thumping the door and shouting for help for quite some time, but nobody came to the house to open the door, which was bolted from outside by respondent Vijay Thakur. The testimony of this witness does not appear to be believable.

12. In view of the above stated position, we are not inclined to interfere with the judgment of the trial Court. Hence, the appeal is dismissed.

(Surjit Singh), J

December 4, 2007(sd) **(Surinder Singh), J**